

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JORGE SOLANO-MORETA,

Petitioner,

v.

S.R. GRANT,

Respondent.

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Case No. CIV-21-386

**ORDER**

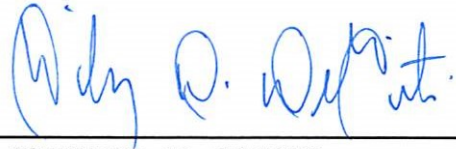
Petitioner, a state prisoner appearing *pro se*, brought this action seeking habeas relief under 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Shon T. Erwin for initial proceedings. Judge Erwin reviewed the petition and recommended that the petition be dismissed without prejudice to refiling. *See* Rep. and Recommendation [Doc. No. 5 at 1]. Judge Erwin advised Petitioner of his right to object and directed that any objection be filed on or before May 24, 2021 [Doc. No. 5 at 9]. Judge Erwin further advised Petitioner that any failure to object would result in a waiver of the right to appellate review. *Id.* Petitioner filed no objection within the time limits imposed.

Upon review of the file and noting no timely objection to the findings and recommendations of Judge Erwin pursuant to 28 U.S.C. § 636(b)(1), the Court adopts the Report and Recommendation [Doc. No. 5], in its entirety.

**IT IS THEREFORE ORDERED** that Judge Shon T. Erwin's Report and Recommendation [Doc. No. 5] is **ADOPTED** in its entirety. The action is **DISMISSED** without prejudice to the filing of a new action. A judgment shall be issued forthwith.

**IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability ("COA") when it enters a final order adverse to a petitioner. A COA may issue only upon "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. Upon consideration, the Court finds the requisite standard is not met in this case. Therefore, a COA is **DENIED**.

**IT IS SO ORDERED** this 26<sup>th</sup> day of May, 2021.



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TIMOTHY D. DeGIUSTI  
Chief United States District Judge